

LEGAL REGIME OF DRUG TRAFFIC: STAGES IN THE DEVELOPMENT OF LEGISLATION AND THE ROLE OF CONTROL RELATIONS

Dr. Oleksandr M. Shevchuk

Yaroslav Mudryi National Law University, Ukraine
ORCID: 0000-0003-4864-7316
Oleksandr-shevchuk@ukr.net

Ph. D. Oleg Yu. Bululukov

Yaroslav Mudryi National Law University, Ukraine
ORCID 0000-0003-1598-0542
Oblehrr1@gmail.com

Ph. D. Ivanna Ig. Maryniv

Yaroslav Mudryi National Law University, Ukraine
ORCID 0000-0002-0267-6288
Maryniv-Ivanna1@gmail.com

Ph. D. Anatolii M. Shevchuk

Vinnytsia National Medical University N. I. Pirogov, Ukraine
ORCID 0000-0001-9646-6312
Dosidd111@ukr.net

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Abstract

In this article, various interconnections and patterns of the development of control of legal relations and the legislation on drugs were studied (during the period from XI to 1936). Important basic elements in this study are following: general scientific and special scientific techniques and methods as abstraction, generalization, comparative historical, comparative legal, systemic, logical form. The use of the historical and legal method made it possible to trace the genesis of scientific approaches to the formation of control of legal relations between drugs and legislation in Ukraine, and to periodize the stages of its formation. The retrospective of the emergence, formation and development of control of legal relations regarding drugs and control organisations is analyzed, at different times they were responsible for the practical implementation of anti-drug activities. The aforementioned made it possible to justify the allocation of three main stages, each of which is associated with certain key events, political or social phenomena, changes and restructures of the entire state administration, namely: XI century - beginning of the XX century; 1909-1916, 1917 - 1936. Studying the stages of development of control of relations and anti-drug legislation will allow us the opportunity to offer effective ways to improve it in modern conditions.

Keywords

Legal regulation – Genesis of anti-drug legislation – Drug addiction – Drug control

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Introduction

Currently, the spread of drug addiction, both in the world and in Ukraine, is one of the most acute social problems. Its lack of solution leads to harm to human health. The 2019 UN World Drug Report indicates that approximately 271 million people, i.e. 5.5 percent of the world's population aged 15-64, took drugs in 2017. Although these data are close to results of 2016, a longer-term analysis shows that the number of people who take drugs currently is 30 percent more than in 2009¹. The 2010 UN World Drug Report determines Ukraine's 3rd place in Europe for opiate taking². Therefore, the study of the peculiarities of the formation and development of control of legal relations regarding drugs in different historical periods of the development of legislation is relevant and has practical significance, we also note that this is insufficiently studied in the legal literature. Clarification of the evolutionary development of control of relations will provide an opportunity to propose effective ways to improve legislation regarding drug control.

Methods

The research methodology is based on the use of general scientific and special methods of cognition. Comparative legal and comparative methods were used in the study of legislative acts regulating the formation of control legal relations in relation to drugs in different historical periods. The methods of modeling, analysis and synthesis made it possible to identify the types of legal relationships in relation to drugs in different historical periods of the formation of drug legislation. Important basic elements in this study are following: general scientific and special scientific techniques and methods as abstraction, generalization, comparative historical, comparative legal, systemic, logical form. The use of the historical and legal method made it possible to trace the genesis of scientific approaches to the formation of control of legal relations between drugs and legislation in Ukraine, and to periodize the stages of its formation.

Results and Discussions

The study of legal relations arising and developing in the field of drug trafficking involves the study of the features and qualitative characteristics of all their elements. Such treatment is regulated by various types of legal norms contained in a wide range of legal acts of various legal power, they are often contradictory and do not correspond to the qualitative parameters established according the rules of legal technology and are characterized by unreasonably intense dynamism³. One kind of legal relationship is the control of legal relations in the field of drug trafficking. The content of their regulation is to determine the boundaries of the permitted and prohibited behavior of the subjects at the regulatory and individual levels in accordance with the objectives of the latter, in establishing ideal models of their relations in certain situations⁴.

¹ World Drug Report 2019. 2019. Available at: <https://www.unodc.org/wdr2019>

² World Drug Report 2010. 2010. Available at: <http://www.un.org/ru/development/surveys/docs/drug2010.pdf>

³ A. Yu. Abramov, Improving the mechanism for regulating the turnover of narcotic drugs and psychotropic substances in the Russian Federation: diss Doctor of Science (Moscow: 2015) y A. M. Nasonov, Administrative and legal regulation of the turnover of narcotic drugs and psychotropic substances: diss. candidate of law (Moscow: 2008).

⁴ General theory of state and law: a textbook (Pravo: 2010).

The study of such control of legal relations allows “to more fully and more deeply reveal the role of law as an organizing factor, on which in most cases the results of control activities depend, helps more fully and better use the legal mechanisms of state control, to improve it⁵.

Until the 19th century in Ukraine, the trafficking of narcotic drugs and psychotropic substances was limited only by religious or therapeutic purposes, their application was entrusted to clergy or healers and doctors⁶. However, substances with intoxicating properties in Russia were known even in the period of paganism. In their rites, priests used to apply various herbs, moss, mushrooms and berries for this purpose. The essence of the control of drug trafficking by the Institute of the Magi was to ensure that people in the communities did not abuse these drugs, but took them exclusively for medicinal purposes and under the supervision of witches⁷.

Until the end of the XVIII - the beginning of the XIX century substances intoxicating consciousness were called with the generalizing concept “potions”, with the help of which even ancient Slavic priests entered people into trance, and also treated for some ailments. The application of the potion among the population were gradually ceased with the introduction of Christianity in Russia due to the fact that the Orthodox Church forbade it to be used as an intoxicant⁸. The appearance of the first poppy crops in Kiev is traced in the XI century, And in the XV century poppy became a familiar agricultural plant throughout the country. The seeds of poppy were eaten, but it was already known about its hypnotic effect⁹. At the XV century the normalized advice on the procedure adopted in the United States was systematized and completed in accordance with the principles of the Great Russian laws (“Judicial Laws of 1497 and 1550”)¹⁰.

In the XVII century control functions in the field of healthcare were transferred from the Church to military leaders, where separate control measures were prescribed in the Robbery's Act and Zemsky act. In 1649, in the Cathedral Code, along with the term “potion”, the term “poison” was already used, which was understood to mean certain types of potions (potent and toxic substances) that could harm human health and even cause to death¹¹.

In the XVII - XVIII centuries control of intoxicating, potent and toxic substances in Central and Eastern Ukraine was determined by the legislation of the Russian Empire. So, by decree of Peter I in 1701, it was allowed to trade in drugs only in pharmacies. Thus, at the level of the decree, the beginning of the formation of a system of their legal trafficking

⁵ E. V. Shorina, Control over the activities of government in the USSR (Moscow: The science, 1981).

⁶ Yu. V Makhonin, Stages of development of anti-narcotic legislation in Ukraine: historical and legal aspects. 2009. Available at: <http://www.nbuv.gov.ua/e-journals/FP/2009-3/09mjvipa.pdf>

⁷ B. F. Kalachev; P. N Sbirunov y A. N. Sergeev, The development of drug addiction and drug trafficking in Russia. Available at: <http://www.narcom.ru/parents/agit/8.html>

⁸ Drugs in Russia: A Study by B. F. Kalachev. The third stage - the All-Russian Empire. Available at: http://narkotiki.ru/5_5284.htm#u2

⁹ A. V. Fedorov, Responsibility for acts with narcotic drugs, psychotropic, potent and toxic substances under the law of the princely period and the Russian centralized state (X – XVII centuries), in Drug control. 2009.

¹⁰ M. N. Tikhomirov y P. P. Epifanov, Cathedral Code of 1649 (Moscow: Publishers of Moscow State University, 1961).

¹¹ The complete collection of laws of the Russian Empire: collected. first thing. T. IV. (1700- 1712). Available at: <http://www.runivers.ru/lib/book3130/9812>

was fixed. In addition, in 1729, a decree “On the prohibition of medical practice for people who do not have certificates of knowledge of medicine” monitored compliance with this requirement was noted by the Medical Chancellery¹². At that time, the state policy in the Russian Empire was characterized by a lack of perception of drug addiction as a problem of national scale, the development of trade relations with China, the inconsistency and unsystematic character of legislation in the field of control over drug trafficking, aimed mainly at regulating their import and export, as well as the liberality of legislation governing liability for violation of the rules of their treatment¹³.

In 1789, the Pharmaceutical Charter had been developed, which was valid until the beginning of the XIX century; in 1836 its new edition was issued. It was the main document that regulated the work of pharmacies during the XIX century and ordered pharmacists to stockpile drugs directly at the pharmacy¹⁴.

The production and distribution of intoxicating and potent substances turned out to be extremely profitable, which unwittingly began to lead not only to conflicts between countries, but even to armed clashes. In the middle of the XIX century the so-called “opium” wars began. The first of them was Anglo-Chinese (1840 - 1842), the second began in 1856, and ended in 1858. The result of such conflicts was the widespread taking of opium without medical prescription. Therefore, poppy and hemp crops, cocaine taking and their export abroad were subject to certain control measures in accordance with the provisions of the decrees “On the lists of toxic and potent substances” (1879) and “On cocaine, poisoning with them and prohibition of over-the-counter sales” (1893)¹⁵.

Since the middle of the XIX century the population of the country started much wider using the possibilities of available narcotic drugs to increase mood. Drug addicted doctors advocated interest in such remedies, recommended them for the treatment of various diseases with a mandatory increase in dose, as a result of what at the beginning of the 20th century secret societies of drug addicts appeared. However, already at the turn of the XIX - XX centuries there was information about the first private hospital for the treatment of people with drug addiction. Society and doctors began to realize the harm to human health from non-medical use of drugs¹⁶.

Strengthening of measures to control the trafficking of the latter took place at the international level. The first step in this direction was the convening of the Shanghai Opium Commission, which took place in Shanghai from 5 to 26 February 1909 with the participation of representatives of China, Russia, Italy, the Netherlands, Persia, Portugal and Siam. At its meetings, mainly issues related to the international trade in opium were discussed, opinions on the urgent need to streamline and gradually limit it were expressed¹⁷.

¹² A. V. Fedorov, Responsibility for acts with narcotic drugs...

¹³ Drugs in Russia...

¹⁴ I. Ya. Gorodetska y E. A. Doschoc, “Research on the organization of control over the circulation of drugs and psychotropic drugs in the USSR and Ukraine in the second half of the twentieth century”, in *Pharmaceutical journal* num 4 (2013).

¹⁵ V. N. Yudin, *The legal basis for the formation and activities of drug trafficking control bodies: theoretical and legal study*: Diss. cand. legal Sciences (Moscow: 2011).

¹⁶ Drugs in Russia...

¹⁷ L. N. Anisimov, *Drugs: legal regime* (Leningrad: Publishing House of Leningrad State University, 1972).

The peculiarity of this period of control over the trafficking of narcotic drugs was the presence of separate disparate legal norms, namely: (1) on the delimitation of drugs from toxic substances; (2) only individuals with medical knowledge were entitled to prescribe drugs; (3) their sale is carried out through pharmacies, which must necessarily have their necessary quantity (in reserve); (4) poppy and hemp crops were prohibited, as well as the use of cocaine and their export abroad; (5) the consumption of narcotic drugs was declared dangerous to human health; (6) the first attempts were made to treat people with drug addiction in hospitals.

Further, we have to turn to the next period of development of drug legislation. The process of further development of the regulation of control over the trafficking of narcotic drugs was going on throughout all the years of that century, starting with the first in the history of the World Convention on Drugs set at the International Conference on Opium in The Hague (1912)¹⁸. 12 states took part in it: Russia, Portugal, Persia, the Netherlands, Japan, Italy, England, France, China, USA, Germany, India. All conference participants pledged to pass legislation in their countries aimed at controlling the production and distribution of raw opium, and to limit the number of facilities through which opium can be transported. In addition, for the first time, its participants pledged to set legal control of the production and sale of cocaine, morphine, heroin, medical opium, and their derivatives.

In the Russian Empire until 1917 Control over the trafficking of narcotic drugs and psychotropic substances was carried out by the Ministry of the Interior and the Church. In this Ministry the Police Department and the Medical Department dealt with this issue. In June 1915, the first specialized law in the state "On Measures to Combat Opium and Cumin," was passed, which had legal power only within the Amur Region. Since 1916, the authorities of some large cities began to encourage the opening of private hospitals for the treatment of drug addicted people¹⁹. The peculiarities of this period of development of anti-drug legislation are following (a) the Shanghai Opium Commission decided to limit international trade in opium; (b) at the International Conference on Opium in The Hague (subject to control measures are the production and sale of cocaine, morphine, heroin, medical opium, and their derivatives) (c) the creation of state bodies and the passing of the specialized Law "On measures to combat opium treatment of drug addicts in private hospitals. The problem of increasing the number of people dependent on the taking of narcotic drugs and psychotropic substances after 1917 was very relevant (especially among minors) and required the taking of urgent legal measures²⁰. In 1917, the management and control of narcotic drugs and psychotropic substances were transferred to military medical institutions. At the same time, the attitude towards people with drug addiction was quite liberal. The SNK order of August 31, 1918, No. 7206-7212 "On the fight against cocaine speculation" was passed, as well as the Decrees "On the nationalization of the pharmacy chain in Ukraine" in 1919 and 1920, which stipulated that drug trafficking was possible only with the permission and exclusively by nationalized pharmacy institutions, and a centralized distribution system was also introduced²¹.

¹⁸ M. B. Khodokovskiy, "Development of conventional norms of international law governing the production, distribution and use of narcotic substances", Bulletin of the University of Kiev. Right series num 9 (1969).

¹⁹ B. F. Kalachev; P. N. Sbirunov y A. N. Sergeev, The development of drug addiction and drug trafficking in Russia. Available at: <http://www.narcom.ru/parents/agit/8.html>

²⁰ B. F. Kalachev; P. N. Sbirunov y A. N. Sergeev, The development of drug addiction...

²¹ A. S. Uzhakhov, "The history of the formation of Russian legislation on countering drug trafficking in the pre-Soviet and Soviet periods", Russian investigator num 24 (2009).

The Council of People's Commissars of the USSR issued a Decree of November 26, 1924 "On measures to regulate the trade in narcotic drugs," according to which the drugs could only be stored in the institutions of the People's Commissariat of Health and distributed by local authorities with strict accounting and control. The legislative act also established the rules for the importation of cocaine, its salts, opium and its derivatives (heroin, codeine, morphine) from abroad, as well as the rules for their distribution and trade in the domestic market²². The Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the USSR "On Measures for the Treatment of Narcotic Substances" of May 23, 1928, as a part of the state measures was aimed at creating effective control over the production, distribution and use of medicinal drugs. Industrial production and their sale were monopolized. Such production was carried out by state order and was limited to the satisfaction of medical and scientific needs for it. The annual production amount was established by agreement between the People's Commissariats of Health of the Soviet republics. Based on this, pharmaceutical companies were determined which had the right to produce and supply finished narcotic drugs and psychotropic substances. Further distribution of the latter occurred through the pharmacy chain according to the requests of medical institutions. Retail sale of narcotic drugs and psychotropic substances was carried out according to prescriptions of doctors²³. At those times, the USSR did not yet have a single state body which could control the trafficking of narcotic drugs, and therefore, by a decision of the Council of People's Commissars of July 29, 1935, such functions were assigned to the All-Union State Inspectorate under the Council of People's Commissars of the USSR²⁴, and by order of the People's Commissariat of the USSR of November 11, 1938, the rules for the reception, storage and dispensing of narcotic substances in clinics, institutes, hospitals and other medical institutions were first established²⁵. At the international level, legislation was also formed in the field of control over the trafficking of narcotic drugs, psychotropic substances and precursors. So, after the signing of the Versailles Peace Treaty and the creation of the League of Nations, the latter had overall control over opium trade agreements²⁶. The Convention implemented a system of permits and registrations of foreign trade operations with the submission of detailed statistics of these drug transactions to the Central Committee. All signatories to the Convention pledged to report annually on the amount of narcotic drugs produced, consumed and stored, as well as submit import-export reports every 3 months. The countries-participants to the Convention took upon themselves guarantees of the legality of their international trade in narcotic drugs, and the deliveries of the latter were provided with mandatory certificates and licenses for their import and export²⁷.

²² Yu. V. Makhonin, Stages of development of anti-narcotic legislation in Ukraine: historical and legal aspects, Available at: <http://www.nbuv.gov.ua/e-journals/FP/2009-3/09mjvipa.pdf>

²³ M. P. Selivanov y M. S. Hrup, Anti-narcotic legislation of Ukraine. History. Theory. Comment (Kyiv: Yuricom, 1997).

²⁴ M. P. Legetsy, Administrative and legal measures for combating juvenile delinquency in the field of drug trafficking, psychotropic substances and precursors: diss. Cand. lawyer. Sciences (Kiev: 2004).

²⁵ Directory of the administrative and economic employee of medical institutions: official and reference materials" Compiled by I. Ya Bychkov., I. L. Faerman (Moscow, Publishing House and Printing House of the USSR, Academy of Medical Sciences, 1950).

²⁶ R. N. Chopra y I. C. Chopra, "Quasi-medical use of opium in India and its effects", Bul. on drugs to the United Nations Vol: VI num 3-4 (1955).

²⁷ Bulletin on Narcotic Drugs: Legal Information Portal. Available at: http://www.unodc.org/documents/data-and-analysis/bulletin/2007/Century_of_Drug_Control-R-EB_FILE.pdf

The International Convention on the Limitation of Production and on the Regulation of Narcotic Drugs was signed on June 13 in Geneva, 1931, and in 1933 entered into force. The International Opium Convention (in 1925) determined that all contracting parties were obligated to control the production, sale and transportation of dangerous drugs, and the latter should be sold only in accordance with the legitimate needs of the states. The Geneva Convention also introduced provisions that other substances, the use of which could lead to harmful consequences, should be included in the list of controlled substances. In accordance with the requirements of the Convention, the participating States undertook to pass normative legal acts (laws, decrees) ensuring effective control over the manufacture, distribution and seizure of opium and the export of raw opium²⁸.

Until 1934, the Convention on the Limitation of Production and on the Regulation of the Distribution of Narcotic Drugs was ratified by all drug producing countries except Yugoslavia. This international instrument provided for a quota system. Each contracting party pledged to provide annually a preliminary estimate of the amount of drugs that could be required for medical and scientific purposes. This figure was carefully checked by a control committee, consisting of 4 government experts, who set the maximum annual volume of imports and production, as well as prepared an annual report on preliminary assessments of global requirements for toxic and hazardous substances. The 1931 Convention improved the previously existing system for assessing the needs for narcotic drugs, which, in turn, were divided into 2 groups according to their properties of causing drug addiction²⁹.

The Convention for the Suppression of the Illicit Traffic in Harmful Medicinal Substances, signed in 1936, first made an attempt to assess the world needs for drugs as medicines or research objects. According to its articles 12 and 13, an addition was made about a certain procedure for obtaining separate permits for the movement of narcotic substances. After the passing of the Convention, according to statistics, the amount of drugs legally produced by pharmaceutical factories for the first time approached the officially received amount³⁰.

Conclusion

So, based on the foregoing, a general conclusion should be made. Most of the problems with the development of legislation and control relations in the field of drug trafficking arise due to insufficient regulation at the legislative level. The authors identified four stages in the development of anti-drug legislation in the study period.

The first (XI century - the beginning of the XX century) was distinguished by the appearance of separate disparate legal norms: differentiation of drugs from toxic substances; only individuals with medical knowledge had the right to prescribe drugs and only for the purpose of treatment; their sale was carried out only through pharmacies; poppy crops, cocaine using were banned; the first attempts were made to treat people for drug addiction in hospitals.

²⁸ Bulletin on Narcotic Drugs: Legal Information...

²⁹ A collection of existing treaties, agreements and conventions concluded with foreign countries. People's Commissariat of Foreign Affairs (Moscow: 1938).

³⁰ A. V. Berezhnoy y G. V. Bakhtizin, Preventive Accounting for Persons Who Use Drugs or Psychotropic Substances without a Doctor's Assignment: A Practical Guide (Lugansk: RVV LAWS, 2005).

The second (1909 –1916) production and trade in cocaine, morphine, heroin, medical opium, as well as their derivatives are subject to control measures; the creation of state bodies and the passing of the specialized Law "On measures to combat opiumococrine", the introduction of treatment methods for people with drug addiction in private hospitals.

The third (1917 - 1936) - the beginning of the formation of a system of control over drug trafficking: their trade was possible only with the permission of state and serious nationalized pharmacy institutions; a centralized hospital distribution system has also been introduced; retail sale of narcotic drugs and psychotropic substances is carried out in accordance with the instructions of doctors.

A number of UN conventions have been adopted internationally: International Convention on the Limitation of Production and on the Regulation of Narcotic Drugs; International Opium Convention; Convention on the Limitation of Production and on the Regulation of the Distribution of Narcotic Drugs, The Convention for the Suppression of the Illicit Traffic in Harmful Medicinal Substances and others. In accordance with the requirements of the Convention, the participating States have committed themselves to the adoption of legal acts (laws, decrees) providing effective control over the production, distribution and seizure of opium and the export of raw opium. A quota system was envisaged. Each contracting party undertook to submit annually a preliminary estimate of the amount of drugs that may be required for medical and scientific purposes.

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